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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,278	12/22/2003	Chinnaswamy Anandha Ramakrishnan	U 014954-5	4477

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EXAMINER

MCCORMICK EWOLDT, SUSAN BETH

ART UNIT PAPER NUMBER

1655

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/743,278

Applicant(s)

RAMAKRISHNAN ET AL.

Examiner

S. B. McCormick-Ewoldt

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

The amendment of June 15, 2005 is hereby acknowledged and entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### **Status of Application**

The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1655.

#### **Claim Rejections - 35 USC § 112**

In claim 1 there are two step "b" which makes the claim indefinite.

#### **Claim Rejections - 35 USC § 103**

Claims 1-11 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett *et al.* (US 5,536,516) in view of Bowser (US 6,299,777 B1) and Jena *et al.* ("Organic Acids from Leaves, Fruits and Rinds of *Garcinia cowa*") as stated in the previous Office action.

Moffett *et al.* (US 5,536,516) disclose carrying out an extraction process of *Garcinia* with de-mineralized water and heated (boiled) for a period of 30 minutes to obtain the extraction liquor (column 5, lines 1-5). Moffett *et al.* does not disclose the specific *Garcinia* species as claimed or the process of osmotic membrane distillation. Applicant's arguments filed June 15, 2005 have been fully considered but they are not persuasive. **Applicant argues** that Moffett does not disclose the use of specific *Garcinia* species or the process of osmotic membrane distillation. This is not persuasive as one of ordinary skill in the art would prepare an extract from any *Garcinia* species to see which species would have the most desirable extract of hydroxycitric acid. In addition, Moffett discloses the hydroxycitric acid concentrate comprises 23% to 54%.

Bowser (US 6,299,777 B1) discloses using osmotic membrane distillation for the extraction of concentrated liquid. Because of this important characteristic, osmotic distillation recently has gained much favorable attention in particular for the potential to concentrate liquid

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foodstuffs, cosmetics and pharmaceutical products (column 1, lines 40-44). Fruit juice with pulp i.e. pieces of fruit can be selected for the type of liquid foodstuffs and this process can be used for pharmaceutical products (column 3, lines 39-40; column 4, lines 2-4). Bowser *et al.* also disclose using calcium chloride as the osmotic agent (column 4, lines 35-37; column 7, line 63) and a temperature maintained at 25°C (column 8, line 3). Applicant's arguments filed June 15, 2005 have been fully considered but they are not persuasive. **Applicant argues** that Bowser would not have a reasonable expectation to prepare an extract of *Garcinia* that is enriched with hydroxycitric acid. This is not persuasive as Bowser discloses that osmotic distillation can be used for pharmaceutical products. Also Bowser discloses that this process can be carried out at ambient temperatures and pressures such that this important characteristic in obtaining a pharmaceutical product.

Jena *et al.* ("Organic Acids from Leaves, Fruits and Rinds of *Garcinia cowa*") discloses that hydrocitric acid is contained in the rind of the species of *Garcinia cowa*. Applicant's arguments filed June 15, 2005 have been fully considered but they are not persuasive. **Applicant argues** that Jena does not suggest the use of osmotic membrane distillation to obtain an extract with hydroxycitric acid. This is not persuasive as Jena discloses that *Garcinia cowa* contains hydrocitric acid and one of ordinary skill in the art would have been motivated to modify the teachings of the reference to use osmotic membrane distillation to obtain hydrocitric acid.

**Applicant argues** that the temperature ranges and the ratio of extract to solvent result in unexpected results. This is not persuasive as the Applicant does not support for a claim of unexpected results.

In response to Applicant's argument of temperature ranges and the ration of extract to solvent result in unexpected results, as discussed in the previous Office action, the temperature of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of temperature and volumes in the amounts in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of

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temperature and of volume amounts would have been obvious at the time of Applicant's invention.

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Moffett disclose carrying out an extraction process of *Garcinia* with de-mineralized water and heated (boiled) for a period of 30 minutes to obtain hydroxycitric acid which comprises 23% to 54% concentrated extract of hydroxycitric acid, obtained by extraction from *Garcinia* rinds (column 1, lines 27-41). Bowser discloses the process of osmotic distillation that can be used with fruit to be use for pharmaceutical products. However, Bowser does not use *Garcinia* species. Jena discloses that *Garcinia cowa* is used for extraction of hydroxycitric acid. The references taken together teach that hydroxycitric acid can be extracted from *Garcinia* species as taught by the combined teachings of Moffett, Bowser and Jena. One of ordinary skill in the art would be motivated to extract hydroxycitric acid from *Garcinia* by means of using osmotic distillation because of the favorable attention to concentrate liquid foodstuffs, especially pharmaceutical products, as disclosed by the reference.

Therefore, the rejection is deemed proper and is maintained.

#### Summary

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax number for the group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme

*Susan D. Coe*  
8-16-05  
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PRIMARY EXAMINER